

STATE OF MICHIGAN
COURT OF APPEALS

In re KNOTTS, Minors.

UNPUBLISHED
October 18, 2016

No. 332146
Oakland Circuit Court
Family Division
LC No. 2015-834604-NA

Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to two minor children, CK and RK, under MCL 712A.19b(3)(b)(i) (the parent's act caused the sexual abuse of the child or the child's sibling and it is reasonably likely that the child will suffer abuse in the foreseeable future if placed with the parent), (b)(ii) (failure to prevent abuse), (b)(iii) (nonparent caused abuse and reasonable likelihood of repeated abuse by nonparent if placed in parent's home), (g) (failure to provide proper care or custody), (j) (reasonable likelihood that child would be harmed if returned to parent's home), and (k)(ii) (criminal sexual conduct involving penetration). We affirm.

I. BACKGROUND

The children were removed from respondent after CK disclosed that respondent's live-in boyfriend had sexually abused her for over seven years. Petitioner's original and amended petitions¹ sought termination of respondent's parental rights based on her failure to protect CK from sexual abuse. The central allegation was that respondent allowed her boyfriend, a convicted sex offender, to live in the home with the children after Child Protective Services (CPS) advised her of her duty to protect the children from the boyfriend and the substantial risk of harm created by allowing him to live in the home. Respondent pled no contest to the amended termination petition and granted the court jurisdiction over the children. Approximately two months after that hearing, the court conducted a best interest hearing. The trial court delivered its opinion on the record, finding clear and convincing evidence to terminate respondent's parental rights on the basis of respondent's plea, and further finding by a preponderance of the evidence that termination was in the children's best interest.

¹ An amended petition was filed to reflect the correct full name of CK.

II. ANALYSIS

Respondent challenges the trial court's order terminating her parental rights on two grounds. She first argues that termination of her parental rights was premature because she was not offered reunification services. She next argues that termination was not in either child's best interests. We disagree with both arguments.

A. REASONABLE EFFORTS

"The time for asserting the need for accommodation in services is when the court adopts a service plan" *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Accordingly, because respondent failed to object to petitioner's failure to provide her services, she failed to preserve this issue. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unpreserved errors are reviewed for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, "petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2) and (4). However, petitioner is not required to provide reunification services when permanent custody is requested at the initial disposition or when aggravated circumstances exist. *In re Moss*, 301 Mich App 76, 90-92; 836 NW2d 182 (2013); MCL 712A.19a(2); *In re HRC*, 286 Mich App 444, 463-465; 781 NW2d 105 (2009). Aggravated circumstances involve child abuse that includes, among other things, "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate." MCL 722.638(1)(a)(ii).

In this case, the initial petition requested termination and there was evidence that CK suffered sexual abuse from respondent's live-in boyfriend. Accordingly, petitioner was not required to make reasonable efforts toward reunification and therefore the failure to make such efforts was not error. See *In re HRC*, 286 Mich App at 463 (finding that because "MCL 722.638(1)(a)(ii) mandates that petitioner seek termination of parental rights when the parents are suspected of perpetuating sexual abuse upon the minor children or their siblings and when a parent fails to intervene to eliminate that risk . . . when petitioner filed its first petition to terminate respondent's parental rights . . . it was not required to provide respondents with any reunification services. . . .").

B. BEST INTERESTS

This Court reviews a trial court's decision for clear error regarding whether termination is in the child's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App at 83. Whether termination of parental rights is in the children's best interest must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90.

"The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In making the best

interest determination, the court should weigh all of the evidence and may consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Id.* Further considerations may include “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *Id.* at 714.

Moreover, “a child’s placement with relatives weighs against termination,” and a relative placement “is a factor to be considered in determining whether termination is in the child’s best interests.” *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012), citing *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Regardless of relative placement, the trial court may terminate parental rights if it finds that termination is in the child’s best interests. *In re Olive/Metts Minors*, 297 Mich App at 43, citing *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled on other grounds by *In re Morris*, 491 Mich 81 (2012). However, the trial court must explicitly address whether termination is appropriate in light of the relative placement, and a court’s failure to do so “renders the factual record inadequate to make a best-interest determination and requires reversal.” *In re Olive/Metts Minors*, 297 Mich App at 43, citing *Mason*, 486 Mich at 163-165.

Respondent argues that her bond with the children, the children’s placements with relatives, and respondent’s suitable home and income each weighed against terminating her parental rights. We reject these arguments.

We will address each child separately. The trial court acknowledged that respondent loved and had been bonded with both of her children. However, with respect to CK, the court found that the parental bond was strained if not broken by respondent’s failure to protect CK and the distrust that CK developed for respondent because of that failure. The court also acknowledged the custody order placing CK with her father, but because a child’s parent is not a relative as defined by MCL 712A.13a(l)(j) there was no requirement for the court to consider the placement as a relative placement weighing against termination. *In re Olive/Metts Minors*, 297 Mich App at 43; MCL 712A.19a(6)(a); See also MCR 3.903(A)(18). The court found that given the prolonged abuse and the need to provide CK with stability and security that severance of the parental relationship with her mother was in CK’s best interests. We cannot find this determination to be clearly erroneous.

Turning to RK, as noted before, the trial court considered respondent’s affection and bond with both children. The court, also explicitly addressed that RK was placed with a relative, an uncle who expressed interest in planning for her in the long term. However, the court found that despite the bond and relative placement, that it was in RK’s best interest to terminate the respondent’s parental rights. In reaching this conclusion the court noted that RK’s school attendance and performance had improved significantly after she was removed from her mother’s home. Even the respondent acknowledged that the previous home environment had been stressful and chaotic and that she did not think that she could provide a stable, secure home for RK until at least after the following school year. The court noted that RK had unmet dental needs while living with respondent. Additionally the court commented on respondent’s recent positive cocaine screening and alcohol issues. Given the totality of the record we cannot find clear error in the best interest finding regarding RK.

Respondent also argues that the court erred in considering her health problems as a barrier to reunification. However, the record depicts that it was respondent who cited her health problems as barriers to immediate reunification.

Accordingly, we cannot find, on this record, that the trial court clearly erred in its best interest determination or ultimate decision to terminate respondent's parental rights.

Affirmed.

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens